TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 337.

JOHN GEORGE KILLIAN, ADMINISTRATOR, &c., OF WILLIAM SCHLORB, DECEASED, MARY MARGARET SCHLORB, ET AL., APPELLANTS,

vs.

WILLIAM E. CLARK.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 7, 1881.

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1 *Bill of Review. Filed Jan.* 4, 1877.

In the Supreme Court of the District of Columbia, holding an Equity Court for said District.

JOHN GEORGE KILLIAN, Administrator *de bonis non* of Wm. Schlorb, deceased, Mary Margaret Schlorb, Emma Schlorb, Whelimina Schlorb, Kate Schlorb, George L. Schlorb, and John Schlorb, Complainants, *vs.* WILLIAM E. CLARK, Defendant.	No. 5322. In Equity.

The bill of review of the above-named complainants, praying a review of two (2) decrees signed and enrolled in this cause of the above-named defendant, William E. Clark, as complainant against John George Killian *et al.*, the above-named complainants, as defendants, being equity cause No. 3877, docket No. 13, of the supreme court of the Dist. of Columbia.

To the honorable the justices of the supreme court of the District of Columbia:

Your complainants, humbly complaining, show and represent unto your honors as follows:

1st. That your complainants and the defendant in this bill of review are residents and citizens of the District of Columbia.

2d. That said co-complainant, Mary Margaret Schlorb, widow of William Schlorb, deceased, sues in her own right, and said co-complainant, Emma Schlorb, being over the age of twenty years, sues in her own right, and that said co-complainants, Kate Schlorb, Whelimina, otherwise called Menie Schlorb, George L. Schlorb, and John Schlorb, infant children of said William Schlorb, deceased, and said Margaret Schlorb, sue, through their mother and next friend, Mary Margaret Schlorb, and said co-complainant, John George Killian, sues as administrator *de bonis non* of the estate of said William Schlorb, deceased.

3d. Your complainants further show unto your honors that on the *the* 11th day of August, A. D. 1874, William E. Clark (the above-named defendant) exhibited his bill of complaint in yonr honorable court against your complainants, and thereby set forth as follows:

In the Supreme Court of the District of Columbia.

WILLIAM E. CLARK *vs.* JOHN GEORGE KILLIAN, Administrator *de bonis non* of Wm. Schlorb, Mary Margaret Schlorb, Emma Schlorb, Menie Schlorb, Kate Schlorb, George L. Schlorb, John Schlorb.	In Equity. No. 3877.

The bill of complaint of Wm. E. Clark respectfully represents:

1st. That all the parties to this suit are residents of this district,

and all the parties defendant are sued in their own right, except John George Killian, who is sued as administrator *de bonis non* of Wm. Schlorb, late of this district, deceased, who was appointed as such by this court on the death of John Killian (hereinafter named), adm'r of Wm. Schlorb. The said Mary Margaret Schlorb is 2 said to be the wife of said Wm. Schlorb, and the other defendants are the minor children of said Margaret and William.

2d. That on or before the 18th day of August, 1858, the said Wm. Schlorb was seized as in fee simple of lots 6 and 9, in square 654, and was the owner of certain goods and chattels then in a building standing upon one of said lots, and the said real and personal property constituted all of his estate at that time. And being so seized and possessed on the said 18th of August, 1858, he executed a deed conveying all of the same to John Killian, since deceased, in trust for the use of said Mary Margaret, and providing among other things that the same shall not be liable for the debts of said Wm. Schlorb, and that in the event of the death of said Margaret, leaving said William surviving him, then the trustee to hold said trust property to and for the use and benefit of said William during the term of his natural life, &c.; all of which will more fully appear by a copy of said deed duly recorded in liber J. A. S. No. 159, folio 303 *et seq.*, of the land records of said district, to which record reference is hereby made, and it is prayed that the same may be taken as part of this bill; and this complainant is advised that the said conveyance was a fraud upon the creditors of the said William Schlorb, and is null and void.

3d. That on or before the 23d of October, 1858, the said William Schlorb purchased of one John B. Kibby lots Nos. 5 and 8, in square No. 654, in the city of Washington, D. C., and paid for them with his own means, and, with the purpose and design to hinder, delay, and defraud his creditors, directed the said Kibby to convey the same to said Killian in trust for the sole and separate use of said Margaret Schlorb, free from any liability for the debts of said Wm. Schlorb, and the said William and Margaret joined with said Kibby in executing said deed; all of which will more fully appear by said deed duly awarded in liber J. A. S. No. 159, folio 413 *et seq.*, of the land records of said district, and it is prayed that said record may be taken as part of this bill.

4th. That on or before the 23d of December, 1868, the said Wm. Schlorb was seized as in fee simple of lot No. 1, in square 654, in the city of Washington, D. C., and being so seized on the said 23d day of December, 1868, with the intent to hinder, delay, and defraud his creditors, the said William executed a deed conveying the said lot 1, in square 654, together with certain goods and chattels described in a schedule annexed to said deed, to the said Killian in trust for the sole and separate use of the said Margaret, free from all liability for the debts of said William, and free from his control, or that of any of his creditors; all of which will more fully appear by said deed duly recorded in liber D No. 4, ff. 421 *et seq.*, one of the

land records of this district, and it is prayed that said record may be taken as part of this bill.

5th. That on or before the 5th day of October, 1865, the said Wm. Schlorb purchased of one Henry J. Baker lot 2, in sq. 654, in the city of Washington, D. C., and with a view to hinder, delay, and defraud his creditors, had the same conveyed to his infant son, George L. Schlorb, then of very tender years, and the complainant is informed and believes that the whole consideration for said lot was paid by said Wm. Schlorb. Reference is here made to the record of said deed in liber R. M. H. No. 4, ff. 236 *et seq.*, and it is prayed that said record may be taken as a part hereof.

6th. That on or before December 21, 1865, the said Wm. Schlorb purchased of one Thomas B. Brown lot 3, in sq. 654, in the
3 city of Washington, D. C., and with the design to hinder, delay, and defraud his creditors, had the same conveyed to said John Killian in trust for the sole and separate use of said Margaret Schlorb, free from the control of her husband, and this complainant is informed and believes that the entire consideration for said lot was paid by the said Wm. Schlorb out of his own means. Reference is here made to the record of said deed in liber R. M. H. No. 14 of the land records of this district, and it is prayed that said record may be taken as part hereof.

7th. That on or before May 3d, 1866, the said Wm. Schlorb purchased of one Amos P. Budle the north half of lot 7, in sq. 654, in the city of Washington, D. C., and, with the design to hinder, to delay, and defraud his creditors, had the same conveyed to said John Killian, in trust, for the sole and separate use of said Margaret Schlorb, free from the control of her husband. And this complainant is informed and believes that the entire consideration for said lot was paid by said William Schlorb out of his own means. Reference is here made to the record of said deed in Liber R. M. H. No. 15, ff. 347, &c., of the land records of this District, and it is prayed that said record may be taken as part of this bill.

8th. And this complainant is informed and believes, and so charges, that the said William Schlorb was not, subsequent to the said 18th day of August, 1858, the owner of any real estate in said District of Columbia, other than those pieces mentioned in the several deeds hereinbefore referred to, and that by the said deeds the said Schlorb conveyed away to his wife and infant son all of his property, real, personal, and mixed, while at the same time, and continuously up to the time of his death, the said Schlorb continued to carry on his *on his* business as a butcher.

9th. That on the 22d day of November, 1865, the said William Schlorb commenced dealing with this complainant, and being largely indebted to him, this complainant, suit was commenced on the law side of this court, in cause No. 5805. And on the 26th day of June, 1873, a judgment was rendered in favor of this complainant for $\$3{,}819\frac{25}{100}$ and costs, against John Killian, ad'r of Wm. Schlorb, who had previously died, as will more fully appear by the records of said cause, to which reference is here made as a part of this bill.

10th. That on the —— day of ——, 1874, a *fi. fa.* was duly issued out of this court, which was returned by the marshal of the District "*nulla bona.*"

11th. This complainant is advised that the several transfers of property hereinbefore set forth to the wife and infant son of said Schlorb were fraudulent and void as to him and the other creditors of said Schlorb.

In view of the facts hereinbefore set forth, this complainant prays:

1st. That the parties defendant to the bill be served with process.

2d. That the several deeds to John Killian, trustee, and to George L. Schlorb be declared null and void, so far as they affect the interest of this complainant or the other creditors of said William Schlorb.

3d. That a trustee be appointed by this court to sell so much of the property of the said William Schlorb as may be necessary to pay the judgment in favor of this complainant and all the necessary expenses of this suit.

4 4th. And for such other and further relief as to the court may seem meet.

WILLIAM E. CLARK,
FRANCIS MILLER,
Sol's for Compl't.

I, William E. Clark, do solemnly swear that I have heard the above bill read and know the contents thereof, and that the statements therein contained, as of my own knowledge, are true, and those on information and belief I believe to be true.

WILLIAM E. CLARK.

Subscribed and sworn to before me, this 11th of August, 1874.

R. J. MEIGS, *Clerk*,
By S. P. WILLIAMS, *Ass't.*

4th. Your complainants pray leave to read, refer to, and make part of this bill of review the said bill of complaint of said defendant, William E. Clark, if need be.

5th. Your complainants further show that said complainants, being served with process of subpœna to appear and answer said bill of complaint of said William E. Clark, for that purpose appeared and put in their answers, that is to say, that said co-complainant, Mary Margaret Schlorb (by and through her then solicitor, E. C. Carrington, Esq.,) made answer to the following effect:

In the Supreme Court of the District of Columbia, this 21st day of August, A. D. 1874.

WILLIAM E. CLARK
vs.
JOHN G. KILLIAN *et al.* } Equity. No. 3877.

The answer of the defendant, Mary M. Schlorb, one of the defendants in the above-entitled cause, to the bill of complaint of the above-named plaintiff.

This defendant, saving and reserving to herself all benefit which may be had by way of exceptions to the said bill of complaint, or otherwise, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary to make answer, answering, saith:

1. She admits that the parties to this cause, plaintiff and defendants, are residents of Washington city, District of Columbia; but indignantly repels the insinuation in said bill made that she was not the lawfully wedded wife of William Schlorb, deceased, late of said city and District, but, on the contrary, states that she was duly united with said Schlorb in the holy bonds of matrimony, on or about the 18th day of November, A. D. 1851, and that the infant defendants in this cause are the offsprings of said marriage, born in lawful wedlock.

2. Further answering, defendant denies every and each of the allegations in said bill charging fraud upon herself or her said deceased husband in reference to the transfer of the property in the bill mentioned and particularly described. On the contrary, she states and charges the fact to be that the transfer of the greater portion of said property was made and completed in the year 1858, about eight years before any dealings took place between the defendant's deceased husband and the plaintiff, and at a time when her husband was free from debt, in comfortable circumstances, and engaged in a prosperous business, and that the only piece of property transferred in trust for her by said Wm. Schlorb, deceased, was one lot, in the year 1868, after the dealings between him and the plaintiff had commenced and were in progress. And defendant charges the fact to be that at the time of the transfer of said last-mentioned piece of property, upon a settlement of accounts between her husband and the plaintiff, no balance would have been found against him, the indebtedness forming the basis of said bill having arisen some time subsequent to said transfer and very shortly before the death of her said husband.

3d. In reference to lot 2, in square 654, referred to in said bill, conveyed by one H. J. Baker to George L. Schlorb, the infant son of defendant and said William, deceased, and charged to have been purchased with the money of said William, defendant charges and alleges the fact to be that said transaction was made and completed at least a year before the dealings aforesaid commenced, and that the plaintiff could not therefore have trusted her husband on account of said lot, the same never having been in his name upon the land records.

4th. And defendant, answering generally, says that all the property referred to in said bill, with the single exception of one lot, having been transferred to a trustee for the benefit of defendant many years before the transactions between plaintiff and defendant's deceased husband commenced, no credit could have been given her husband on that account, and said transaction could in no way have contributed to the creation of the indebtedness in said bill mentioned, and in relation to the allegation in said bill that said transactions were a fraud upon other creditors of her deceased husband,

defendant says that the same is false, inasmuch as her husband was at that time free from debts and conducting a prosperous business.

5. And, further answering, defendant says that a large portion of the purchase money of the property described in the bill was paid by her, being the result of her own individual labor and exertion, and apart from anything received from her husband; and this and other facts herein set forth she is ready and willing to prove in such manner and at such time as the court may appoint.

6. And defendant further says that she is now a poor widow, having five children, all of them young, unable to do anything to assist her, and dependent entirely upon her for support, maintenance, and education; and that the property which the plaintiff in his bill seeks to render liable for the judgment against her husband is all that she has to assist her in providing the plainest food, and hardly any other of the necessaries of life, and to subject her individual property to the payment of her husband's debts would be to expose herself and helpless children to danger of starvation, and would be unjust, inequitable, and against good conscience. And she further states that said property is situated just east of the arsenal, on the Island, and in the midst of a number of brick-yards, a portion of the city where there are no improvements and property is of very little value, and that said property, if offered for sale at public auction, would not bring enough to satisfy said judgment, and, therefore, nothing would be left for herself and children.

7. And defendant denies the justice and legality of the indebtedness claim[ed] to be due from her husband to the plaintiff, and alleges that the judgment therein mentioned was unlawfully obtained, and that the same is improper, irregular, and oppressive.

8. And, as tending to show that the transfer of property above referred to were made in good faith, and with no intention or
6 disposition to defraud creditors, defendant states that the plaintiff is the only person who claims a debt to be *one* from her said husband; and having fully answered as she is advised, she prays to be hence dismissed with her reasonable costs in this behalf most unjustly expended.

M. MARGARET SCHLORB.

I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

M. MARGARET SCHLORB.

Subscribed and sworn to before me, the 21st day of August, A. D. 1874.

CHARLES WALTER, *J. P.*

6th. Your complainants further show that in said cause of William E. Clark against your complainants your honorable court, on the 14th day of October, 1874, on motion of said defendants Clark's solicitor, passed an order appointing said co-complainant Mary Mar-

garet Schlorb guardian *ad litem* of said co-complainants Emma, Kate, Menie, George, and John Schlorb, for the purposes of said suit, as will more fully appear, reference being had to said order filed in said cause and recorded in minutes 8, page 240, of your honorable court, which your complainants pray leave to read, refer to, and make part hereof, if need be.

6½. That said co-complainant Mary M. Schlorb was appointed guardian of defendants Emma, Menie, Kate, George L., and John Schlorb, although said Emma, Menie, Kate, George, and John Schlorb were not in court, and although said Emma, Menie, and Kate were above the age of fourteen years, and said George and John above the age of four years.

7. Your complainants further show that the said co-complainant, Mary Margaret Schlorb, as said guardian *ad litem*, on oath, filed an answer to said bill of said William E. Clarke on behalf of said co-complainants Emma, Whelimina (otherwise called Menie), Kate, George, and John Schlorb, to to the following effect, to wit, that they being infants under twenty-one years of age, that they, as defendants in said bill of said Clark, could not admit any of the matters and things alleged in the said bill, and being infants of tender years submit their rights to the protection of the court, as will fully appear by said answer filed in said cause, which your complainants pray leave to read, refer to, and make part hereof, if need be.

8. Your complainants further show that said co-complainant John George Killian, on the 21st day of August, 1874, filed his answer (duly sworn to by said Killian before the clerks of your honorable court) in said cause of said Clark against your complainants, to the following effect:

In the first paragraph of his said answer said co-complainant says: "The residence of the parties to this cause, as alleged in the bill, are admitted;" and in the second (2) paragraph of his said answer he says: "The defendant admits that he was appointed and is now the administrator *de bonis non* of the estate of Wm. Schlorb, deceased, having succeeded his brother, John Killian, who acted in that capacity until his death, which occurred several months ago;" and in the third paragraph of his said answer he, the defendant, knows nothing in relation to the property and real estate which was held in trust by his deceased brother for the benefit of
7 his co-defendant Mary M. Schlorb, except the fact of the deeds so conveying the property being duly recorded among the land records of the District of Columbia. And he further says that at the time of the transfers of said real estate that he, of his own personal knowledge, knows that the said William Schlorb, deceased, was engaged in a prosperous business—was entirely responsible—and that said deeds were not made with any intent or design to defraud any of his creditors, much less the plaintiff, with whom at that time he had not commenced to deal. And further, he says that he is satisfied that a large portion of the purchase-money paid for said property was contributed by said Mary M. Schlorb as the result of her own earnings and savings, as will more fully appear by reference to said answer filed in said equity cause of said Clark

against these complainants, which your complainants pray leave to now refer to and make part hereof, if need be.

9th. Your complainants further show that on the 12th day of October, A. D. 1874, the said defendant, William E. Clark, filed his joinder of issue on your complainants' said answers to his said bill.

10th. Your complainant further shows that although issue was joined on said bill and answers no witnesses were examined; and that on the — day of ——, 1874, said defendant Clark, by his said solicitor, set the said cause for hearing on his said bill and answers of your complainants, and the same was heard by your honorable court on or about the 17th day of February, A. D. 1875, when a decree was pronounced by your honorable court, which was afterwards passed and entered, in which it is set forth and recited as follows, to wit:

"This cause coming on to be heard on bill, answers, and replication was argued by counsel and in consideration thereof it is this 17 day of February, 1875, ordered, adjudged, and decreed that the conveyances of lots one (1) and (3) and the north ½ of lot seven (7) to John Killian, in trust for Mary Margaret Schlorb, mentioned in paragraphs 4, 6, and 7 of plaintiff's bill, be, and the same are hereby, declared to be null and void, and Francis Miller is hereby appointed as trustee to sell the said lots to the payment of the judgment of plaintiff set forth in said bill, after paying the costs of this suit and the costs of the sale.

"The trustee before proceeding to sell the said lots shall file in the clerk's office a bond, to be approved by the court, in the sum of $2,000, for the faithful performance of his duties as trustee. The terms of sale shall be one-third cash and the remainder in two equal payments at six and twelve months.

"It is further ordered that the property be advertised in the Evening Star twice a week for three weeks before said sale.

"And as to the conveyances other lots mentioned in said bill, it is ordered that no further proceedings be had until the coming in of the trustee's report of sale, all equities between the parties as to the said lots being reserved until the coming in of said report."

11. Your complainants are informed and believe, and, so believing, charge and aver, that said Francis Miller, under and by virtue of said decree on the 6th day of April, 1875, sold said lots 1, 3, and north half (½) of lot 7 to said defendant, William E. Clark, for $1,403$\frac{45}{100}$, as will appear by the report of said Francis Miller, trustee, filed in said cause on the 17th day of April, 1875, which your complainants pray leave to read, refer to, and make part hereof, if need be, which said sale was ratified by your honorable court.

12. Your complainants further show that afterwards, on
8 the 18th day of June, 1875, your honorable court pronounced and passed a second (2) decree in said cause to the following effect, to wit:

"This cause coming on to be further heard, and it appearing from the report of the trustee hereinbefore appointed to make sale of a por-

tion of the real estate described in the bill of complaint herein, that the proceeds of said sale were insufficient to pay the judgment against the estate of Wm. Schlorb, deceased, upon further consideration it is, this 18th day of June, 1875, ordered, adjudged, and decreed, that the conveyances of lots five (5), six (6), eight (8), and (9), in square No. 654, to John Killian, in trust, for the use of Mary Margaret Schlorb, wife of William Schlorb, land the conveyance of lot two (2), in said square 654, to George L. Schlorb, be, and the same are hereby, declared to be null and void. It is further ordered, adjudged, and decreed, that Francis Miller is hereby appointed trustee to sell the said lots, to wit, lots two (2), five (5), six (6), eight (8), and nine (9), in square 654, to satisfy the judgment mentioned in the bill of complaint herein. It is further order that the said trustee before proceeding to sell said lots shall file in the clerk's office of this court a bond, to be approved by the court, in the sum of $3,000, for the faithful performance of his duties as trustee, and that the terms of said sale shall be as follows: one-third of the purchase money shall be paid in cash, and the remainder thereof in two equal instalments in six and twelve months, the deferred payments to be secured by deed of trust on the property; a deposit of $50 on each lot shall be made on the day of the sale. It is further ordered that the lots before mentioned be advertised for sale in the Evening Star twice a week for three weeks before the day of said sale," which said decree is made part hereof if need be.

13th. Your complainants further show they are informed and believe that on the 27th day of July, A. D. 1875, Messrs. Carrington & Carrington, solicitors of your complainants as defendants in said cause, came into court and moved the court to vacate and set aside the decree passed in said cause, for the reasons set forth in the annexed Exhibit A, as part hereof, the same being a true copy of the motions, reasons, and affidavits of said Carrington & Carrington in said cause, which your complainants pray leave to read, refer to, and make part hereof, on hearing of which motion your complainants are informed and believe your honorable court overruled the same, on the ground that the same was not in proper form; and if any errors existed in said decrees, the same could be remedied by a bill of review.

14th. Your complainants further show and allege that both of said decrees have been signed and enrolled, and your complainants humbly insist that they are erroneous and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections.

15th. Your complainants show and allege that said decree of the 17th day of February, A. D. 1875, for the sale of said lots one (1), three (3), and the north half (N. ½) seven (7) is erroneous, because—

1st. It is shown in said answer made by said co-complainant, Mary Margaret Schlorb, defendant in said cause, that when said lot 1, 3, and north part of 7 were conveyed, as in said deeds mentioned, on a fair accounting between said defendant Clark and the said William Schlorb, no balance would have been found against said William Schlorb in favor of said defendant Clark.

2d. It was shown in said answer, and not denied by said Clark, that the indebtedness forming the basis of said judgment had *answer* subsequent to said conveyance of said lots, and very shortly before the death of said William Schlorb.

3d. It is shown by said answer of said Mary Margaret Schlorb that at the time of the conveyance of said lots 1, 3, and north half of 7 that said defendant Clark could not have based his transactions with said William Schlorb on the ground that said William Schlorb was the owner of said lots, as it is clearly shown that at the time of said conveyances the said William Schlorb was then engaged in a prosperous and remunerative business, and that such conveyances or deeds were not made, or cause' to be made, with any fraudulent intent what — were made as a reasonable provisions for said complainant, Margaret Schlorb, and the said children.

4th. It is also shown by record of said suit at law of said defendant, William E. Clark, against said William Schlorb (which said William E. Clark makes a part of his said bill of complaint against your complainants) that said William Schlorb commenced to deal with said William E. Clark on the 22 day of November, 1865, and ended on the 22 day of October, 1868, during which time, to wit, two years and eleven months, the almost daily business transactions between said Clark and William Schlorb was between $275 to $1,600 or $1,700, and during said time or period amounted to $99,502$\frac{83}{100}$, as will appear by reference to Exhibit X$\frac{1}{2}$, filed in said suit at law, a copy of which is made part hereof; and it further appears by said Clark's bill of complaint that said judgment was rendered only for $3,819.25, thereby showing that during said period of two years and eleven months said William Schlorb had accounted and paid said Clark $95,683$\frac{58}{100}$.

5th. It is also shown by said record at law (which is made part of said defendant Clark's bill of complaint) that said defendant Clark instituted his said suit at law against said William Schlorb on 12 day of May, 1869. That said William Schlorb filed his pleas of *non assumpsit*, *nil debit*, and statue of limitations on the 1st day of June, 1869; that joinder of issue was filed on 3 June, 1869, and on the 12th June, 1871, said William Schlorb's death was suggested to the court, and on the 13 December, 1871, John Killian, administrator of said William Schlorb, was made a party to said suit, and on the 26 June, 1873, judgment on verdict of the jury was rendered in favor of said Clark for said $3,819$\frac{75}{100}$.

16th. Your complainants show and humbly insist that said second decree, dated the 18th day of June, 1875, ordering a sale of lots 2, 5, 6, 8, and 9 is erroneous, and ought to be reviewed, reversed, and set aside on account of the errors and imperfections, because complainants show—

1st. That at the time of the conveyance of said lots 2, 5, 6, 8, and 9 there was no (as shown by the said answer of said co-complainant, Mary Margaret Schlorb, as defendant in said cause, and also as shown by said defendant, William E. Clark, his said bill of complaint) business transactions between him, said Schlorb, and said William E. Clark. That said deeds of conveyance were duly re-

corded in the land records of the District of Columbia many years prior to any business transactions between said Clark and Schlorb. That the real estate in said deeds of conveyance mentioned never was in the name of said William Schlorb at the time of said business transactions. That at the dates of said conveyances said William Schlorb was not indebted to said William E. Clark or to any other person.

2d. Further, it is shown that during the period or date of said deeds the said William Schlorb was doing a prosperous business, and that any subsequent transactions between said defendant Clark and said William Schlorb could not have been based on said lots as to said William Schlorb being the owner.

3d. It shown by the answers that said conveyances of said lots were not made with any fraudulent intent whatever.

4th. It is shown by the said bill of complaint of said defendant, William E. Clark, that said lots 2, 5, 6, 8, and 9 were conveyed to said John Killian, as trustee, for the benefit of said co-complainant, Mary Margaret Schlorb, and George L. Schlorb, previous to any transactions between said William Schlorb and said William E. Clark. And that said lots 5, 6, 8, and 9 were conveyed to said John Killian, as trustee, in the year A. D. 1858; and that the business transactions between said defendant Clark and said William Schlorb did not commence until 22 day of November, 1865, there being a period of nearly eight (8) years between the date of said conveyance of said lots and the recording of the same in the land records of the District of Columbia before the date of any business transactions between said William E. Clark and said William Schlorb.

5th. And complainants pray here to refer to and make part of this their 5th showing of error paragraph No. *No.* 4 of section 15 of this their bill of review as if they here had repeated the same.

6th. It is also shown by said answers that said Mary Margaret Schlorb, by her own labor, paid a large portion of the purchase money for said lots in cause mentioned, and your complainants allege that said answer of said Mary Margaret Schlorb is confirmed by the answer of said co-complainant, John George Killian, administrator *de bonis non*, filed in said equity cause, and hereinbefore set forth as part of this bill of review, which your complainants pray leave to read, refer to, and make part hereof, if need be.

7th. That as to said lot No. 2 in said second (2) decree mentioned, it is now shown by said defendant Clarke's bill of complainant that said lot No. 2 was conveyed to said co-complainant, George L. Schlorb, by Henry J. Baker, on the 5th day of October, 1865, and recorded nearly two (2) months before the commencement of any business transactions between said defendant, William E. Clark, and said William Schlorb, as will appear by said bill of complaint and the proceedings at law therein referred to as part of said bill.

8th. It is alleged and shown in the answers filed in said equity cause that at the time of the conveyance of said lots 2, 5, 6, 8, and 9 the said William Schlorb had no creditors; nor does the said de-

fendant, Clark, in his said bill of complaint against these complainants, allege that there were other creditors, or that he knew said William Schlorb at that time. Nor is it shown that at the time of filing said bill of complaint there were any creditors except said Clark, who became a creditor nearly eight years after the conveya nce of said lots 5, 6, 8, and 9, and recording thereof as aforesaid, and nearly two (2) months after date of conveyance of said lot 2, and the recording of said conveyance.

17th. Your complainants further show and allege they are informed and believe, and so believing humbly insist, that if the said William Schlorb was in no way indebted to said defendant, William E. Clark at the time of said conveyances of said lots to said John Killian, as trustee, and to said George L. Schlorb, and did not become indebted until long subsecquent to the making and recording of the said deeds of conveyances, that said William Schlorb had a right in law to make, or cause to be made (as a man of family, to provide for his wife and children), the conveyances for the benefit of Mary Margaret Schlorb, his wife, and his infant children of him, said William Schlorb,
11 and that a decree rendering such conveyance null and void would be erroneous; and further your complainants allege they are informed that if said William Schlorb were indebted to no other persons at the time of the conveyances of said lots, that a decree set' aside said conveyances as a fraud upon subsequent creditors would be erroneous; and even if there were other creditors, a decree setting aside said conveyances in this cause would be erroneous, because said defendant, William E. Clark, or said answers, make no allegation whatever to other creditors, nor had any other claims been filed or established against said estate of said William Schlorb, nor has any attempt been made in said proceeding to show there were other creditors.

18th. Your complainants further show they are informed and believe, and so believing say, that a verified answer denying the allegations of the bill of complaint is in law a complete answer to said bill, and that it was an error in this honora ble court to render either of said decrees, especially when said verified answer of said Mary Margaret Schlorb is corroborated by the answer of this then co-defendant and now co-complainant, John George Killian, administrator *de bonis non*, and when it is partially shown by the said bill of complaint that the same is also true.

19th. Your complainants further show that said Francis Miller, trustee, by virtue of said second decree, on the 16th day of September, 1875, sold said lots 2, 5, 6, and 8, with improvements, to said defendant, William E. Clark, and said lots No. 9 to J. H. Richards, as will appear by said report of said trustee filed in said cause, which your complainants pray leave to read and refer to, and make part hereof, if need be yet.

20th. Your complainants further show that the said Francis Miller, as trustee, has conveyed said lots 2, 3, 5, 6, 8, 9, and north half of lot 7, in said square 654, to the said defendant, William E. Clark, as will appear by the annexed Exhibit B, made part hereof.

21st. Your complainants further show that the said defendant, William E. Clark, shows upon the face of his said bill of complaint against your complainants that said lots 1, 3, 5, 6, 8, and 9, and part of lot 7, in said square 654, were conveyed to said John Killian, as trustee as aforesaid; and further shows in his said bill of complaint the said John Killian had departed this life long prior to the filing of his bill of complaint, yet the said defendant, William E. Clark, did not and has not made the heirs-at-law of said John Killian parties to the said bill of complaint, or proceedings in said equity cause, as the said John Killian, as your complainants believe, died intestate and left the following named persons as his children and only heirs-at-law, to wit: Maggie Ball, (formerly Killian,) Kate Poetzman, (formerly Killian,) and John Killian, all residents of the city of Washington, District of Columbia.

22. Your complainants further show that the said defendant, William E. Clark, has given notice to the said co-complainant, Mary Margaret Schlorb, to remove from and quit said lots 1, 2, 3, 5, 6, 8, 9, and part of 7, as will appear by the said annexed Exhibit B, which your complainant prays leave to read and make part hereof.

23. Your complainants further represent that the said defendant Clark has threatened said co-complainant, Mary Margaret Schlorb, that unless she and said co-complainant remove from and quit said lots at the end of thirty days from date of said notice, he will eject her and her children, meaning said co-complainants, from said lots.

The premises considered, your complainants pray as follows:

12 1st. That the said defendant, William E. Clark, may be made party defendant hereto.

2d. That the said deeds of conveyance to the said defendant, William E. Clark. be declared null and void, and thereby be cancelled.

3d. That said decree of the 17th day of February, 1875, be reviewed, reversed, and set aside.

4th. That said decree of the 18th of June, 1875, be reviewed, reversed, and set aside.

5th. That said equity suit of said William E. Clark against your complainants be reheard and reviewed by your honorable court.

6th. That the defendant, William E. Clark, his servants, agents, and attorney, may be restrained by order and injunction of your honorable court from ejecting and disturbing said complainant, Mary Margaret Schlorb, and said infant co-complainants, in the said lots.

7th. That all necessary accounts may be taken and inquiries made and directions given as to the transactions between said defendant, William E. Clark, and said William Schlorb.

8th. That your complainants may have such other and further relief in the premises as the nature of the case may require.

To which end the complainants pray for process against said defendant, William E. Clark, requiring him to appear and answer the exigency of this bill of review.

The defendants to this bill of review are William E. Clark.

M. MARGARET SCHLORB.

her
EMMA × SCHLORB.
mark.

WM. JOHN MILLER,
Solicitor for Compl'ts.

Witnesses to mark of Emma Schlorb—
J. P. B. LANDS.

I, Mary Margaret Schlorb, do solemnly swear I have heard read the foregoing bill of complaint and know the contents thereof; that the facts therein stated upon my own knowledge are true, and those facts therein stated upon information and belief I believe the same to be true.

M. MARGARET SCHLORB.

Subscribed and sworn to before me, this 3d day of January, A. D. 1877.

L. CABEL WILLIAMSON, *J. P.*

Subpœna issued Jan. 4, '77.

In the Supreme Court of the District of Columbia, the 4[th] day of January, 1877.

Subpœna to Answer.

MARY M. SCHLORB *et al.*, Compl't,
vs.
WILLIAM E. CLARK, Def't. } No. —. Eq. Doc. 16.

The President of the U. S. to William E. Clark:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

13

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

MEMORANDUM.—That the def't herewith served is to enter appearance in this suit, in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Sum'n'd Jan'y 20, 1877.

ALEX SHARP, *Marshal.*

Exhibit A.

In the Supreme Court of the District of Columbia, this 27th day of July, A. D. 1875.

WILLIAM E. CLARK
vs. } Equity. No. 3877.
JOHN G. KILLIAN *et al.*

And now come the defendants by their counsel and move the court to vacate and set aside the decree passed herein on the 18th day of June, A. D. 1875, for the reasons set forth in the following affidavit.

CARRINGTON & CARRINGTON,
Sol's for Defendants.

Edward C. Carrington and Irving Williamson, being duly sworn, depose and say: That we appeared as counsel for defendants before the equity court, at the hearing of this cause, on or about the 17th of February last, and upon argument, his honor Justice Wylie expressed the opinion that the deeds for the benefit of the wife and children were void, as far as the present creditors were concerned, but were good against future creditors to the extent of a reasonable allowance for the wife and children, and the counsel for the defendants rested under the belief that the judge would adhere to this opinion; or, if he was disposed to change the same, would hear argument. We took it for granted that case was disposed of, and would not be further considered by the court, unless its special attention was called to it, and reasonable notice given to counsel on both sides. But the counsel for the complainant, after selling all the property which the court declared subject to sale, in the absence of counsel for defendants, and without notice to them, reported the sale to the court, and obtained a decree to sell the whole of the remaining property, leaving nothing for the widow and children, and counsel for defendants respectfully submit that the judge who presides in the chancery court, in the multitude of business, may have forgotten what occurred in this cause, and gave a decree for the sale of the whole of the property as a matter of course, supposing that there was no objection to it. And counsel respectfully submit that said decree is unjust, illegal, and inequitable, and that they are at least entitled to a hearing, and that the widow and children should not be deprived of a home without the privilege of a hearing through their counsel in open court.

EDWARD C. CARRINGTON.
IRVING WILLIAMSON.

14 Subscribed and sworn to before me, this 27th day of July, A. D. 1875.

HUGH T. HUGHES, *J. P.* [SEAL.]

Exhibit B.

This is to certify that as trustee, appointed for that purpose by the

supreme court of the District of Columbia, I sold, on the 6[th] day of April, 1875, lots one, three, and the north half of seven, in square 654, to Wm. E. Clark; and on the 15th day of September, 1876, I also, by the same authority, sold lots two, five, six, and eight, in square 654, to the said Wm. E. Clark. The said Clark has fully complied with the terms of sale, and I have executed deeds of said lots to him.

FRANCIS MILLER,
Trustee, in Clark vs. Killian and others.

WASHINGTON, *Dec. 9th*, 1876.

WASHINGTON, D. C., *Dec. 11th*, 1876.

Mrs. MARGARET SCHLORB: As I am desirous to have and possess the tenement and premises situated on O street, between First and Half streets southwest, in the city of Washington, D. C., being lots in square 654, conveyed to me by Francis Miller, trustee, as per certificate on the back hereof, I hereby give you notice to remove from and quit the same at the end of thirty days from the date hereof. Witness my hand and seal.

WILLIAM E. CLARK. [SEAL.]

Endorsed: 5322, Eq. 1½. Mary M. Schlorb *et al vs.* William E. Clark *et al.* Exhibit A and B. Filed Jan. 4, 1877. R. J. Meigs.

Demurrer. Filed Feb. 22, 1877.

In the Supreme Court of the District of Columbia.

SCHLORB *et al* *vs.* WM. E. CLARK. } Equity. No. 5322.

The defendants says that the complainants' bill is bad in substance.

FRANCIS MILLER,
Sol's for Defendant.

I hereby certify that, in my opinion, the above demurrer is good in law.

FRANCIS MILLER,
Sol's for Defendant.

I, William E. Clark, defendant in the above-entitled cause, do solemnly swear that the above demurrer is not interposed for the purpose of delay.

WM. E. CLARK.

Subscribed and sworn to before me, this 22d day of February, 1877.

R. J. MEIGS, *Clerk*,
By L. R. WILLIAMS,
Ass't Clerk.

15 *Demurrer Sustained and Bill Dismissed, Apr.* 12, 1877.

In the Supreme Court of the District of Columbia.

MARY M. SCHLORB
vs.
WILLIAM E. CLARK. } Equity. No. 5322.

This cause coming on to be heard on the bill and the demurrers thereto, on consideration thereof it is, this twelfth day of April, 1877, ordered, adjudged, and decreed that the said demurrer be, and it is hereby, sustained and the bill dismissed with costs.

From which decree the complainant appeals and the same is allowed.

By the court.

Endorsed: Exhibits 4 and 5. Schlorb *et al. vs.* Clark.

Leave to Complainants to Deposit $10 *with Clerk in Lieu of Bond. Filed April* 24, 1877.

In the Supreme Court of the District of Columbia.

MARY M. SCHLORB
vs.
WILLIAM M. CLARK. } In Equity. No. 5322

The complainants having appealed from the decree of the equity court passed in this cause on the 12th day of April, A. D. 1877, it is, this 24th day of April, A. D. 1877, ordered that leave be, and is hereby, given to complainants to deposit with the clerk of the court the sum of ten dollars as costs of said appeal, to abide by and pay the judgment of the court on said appeal, instead of giving bond as security for costs.

By the court.

$10 deposited as per order.

Agreement as to Exhibits. Filed May 18, 1877.

In the Supreme Court of the District of Columbia, holding an Equity Court.

MARY M. SCHLORB
vs.
WILLIAM E. CLARK. } In Equity. No. 5322.

It is hereby agreed between the complainants and defendant, by and through their representative solicitors, that the following papers, marked respectively Exhibits M. & M., Nos. 1, 2, 3, 4, 5, and 6, being the deeds mentioned in section three (3) of complainant's bill in this case, and also in sections 2, 3, 4, 5, and 6 of said defendant Clark's bill, referred to in this cause, may be used, referred to, and read in evidence at the hearing of the above-entitled cause, instead of the land records of the District of Columbia in said cause men-

tioned. And, further, said exhibits may be filed in said cause as if the same had been originally filed as exhibits.

WM. JNO. MILLER,
FRANCIS MILLER,
Solicitor for Defendant.

16 EXHIBIT M. & M., No. 1.

This indenture, made this tenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, by and between William Schlorb, of the city of Washington, in the District of Columbia, of the first part, and John Killian, of the same place, of the second part, witnesseth:

That in consideration of the natural love and affection which the said William Schlorb hath and beareth towards his wife, Mary Margaret Schlorb, and for the further consideration of the sum of five dollars current money of the United States to him, the said William Schlorb, in hand paid by the said John Killian before the unsealing and delivery of these presents, the receipt thereof is hereby acknowledged, he, the said William Schlorb, hath given, granted, bargained, sold, assigned, transferred, and set over, and by these presents doth give, grant, bargain, sell, assign, transfer, and set over unto the said John Killian and his heirs, executors, administrators or assigns, all those pieces, parcels of ground lying and being in the city of Washington, in the District of Columbia, and known and distinguished on the ground plate of said city as lots numbered six and nine (6 and 9), in square numbered six hundred and fifty-four (654), and all the goods and chattels, household stuff, furniture, kitchen utensils, and effects now in the building occupied by the said Wm. Schlorb and wife as dwelling and business establishments, situated on the above-mentioned lots No. 6 and 9, which said goods and chattels, household and kitchen furniture, and effects are particularly enumerated and described in the schedule hereunto annexed and made part of these presents, together with the buildings, improvements, rights, privileges, appurtenances, and other hereditaments to the same belonging; to have and to hold all and singular the said pieces of ground and goods and chattels to and unto the use of the said John Killian, his executors, and administrators, and assigns forever, upon trust, nevertheless, to, for, and upon the following uses, intents, and purposes—that is to say, in trust to suffer and permit the said Mary Margaret, her appointees and assigns, to have, hold, occupy, use, possess, and enjoy the said pieces of grounds and goods and chattels, household stuff, furniture, kitchen utensils, and effects to her sole and separate use, notwithstanding her present or any future husband she may happen to marry, and that the same shall not be in any manner subject to his control or liable for his debts. And in the event of the death of the said Mary Margaret Schlorb, leaving the said William Schlorb surviving her, then the trustee to hold said trust property to and for the use and benefit of the said Wm. Schlorb for and during the time of his natural life; and after the death of the said William Schlorb, the said trustee to

to convey, release, and confirm the said trust property to the child or children of the said William Schlorb living at her death, share and share alike.

In testimony whereof, the said William Schlorb hath hereunto set his hand and seal, the day and year first above mentioned.

WM. SCHLORB. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. WALTER.
P. McKENNA.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

We, Chas. Walter and P. McKenna, justices of the peace in and for the county aforesaid, do hereby certify that William Schlorb,
17 party to a certain deed bearing date on the 10th day of August, 1858, and hereunto annexed, personally appeared before us in our county aforesaid the said William Schlorb, being personally well known to us to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this tenth day of August, 1858.

CHAS. WALTER, *J. P.* [SEAL.]
P. McKENNA, *J. P.* [SEAL.]

Schedule: Two horses, two wagons, one old buggy, butcher apparatus, and the entire household and kitchen furniture.

WM. SCHLORB.

Witness:
CHAS. WALTER.

"Received 11 August, 1858, to be recorded, and the same was recorded in Liber J. A. S., No. 159, folio 303 and 304, one of the land records for Washington county, in the District of Columbia, and examined by Jno. A. Smith, clerk."

EXHIBIT M. & M., No. 2.

This indenture, made the twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty-eight, between John B. Kibbey and Helen M., his wife, of the city of Washington, in the District of Columbia, of the first part, and William Schlorb and Margaretta, his wife, of the said city, of the second part, and John Killian, of the said city, of the third part, witnesseth:

That the said John B. Kibby and his said wife, and William Schlorb and his said wife, for and in consideration of the trusts hereinafter mentioned and declared, and for the sum of five dollars, in lawful money of the United States, to them in hand paid, and five hundred and ninety dollars to said Kibbey paid by the said John Killian at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, and enfeoffed, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, and convey unto the said John Killian, his heirs and assigns, all those certain pieces or parcels of

ground situate and lying in the said city of Washington, and being known and described as lots numbered five (5) and eight (8), in square numbered six hundred and fifty-four (654), as the same are laid down on the public plan of said city, together with all the improvements, ways, alleys, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity, or otherwise however, of the said parties of the first and second parts, or any of them, of, in, to, or out of the said pieces or parcels of ground, or either of them; to have and to hold said pieces or parcels of ground and premises and appurtenances unto and to the use of the said John Killian, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, and for no other use, trust, or *or* purpose whatsoever—that is, in trust for the sole use and benefit of the said Margaretta Schlorb, the wife of the said William Schlorb, free of all liability for and control by her said husband and his debts and contracts and obligations, or any future husband and his debts and obligations, and to permit the said Margaretta Schlorb to use and occupy the said pieces or parcels of ground and premises and appurtenances, and the rents, issues, and profits thereof, to take, have, and apply to and for her sole use and benefit.

And upon this further trust, at any time or times hereafter, upon the written request and direction of said Margaretta Schlorp,
18 notwithstanding her present or future coverture, to make and execute all such deed or deeds, deeds of trust, mortgages, and leases, to convey the said pieces or parcels of ground, or either of them, or any part thereof, absolutely in fee-simple, in trust, by way of mortgage, or for other time or term, to such person or persons and for such uses and purposes as the said Margaretta Schlorp shall or may request and direct as aforesaid, and such investment or other proper disposition of the proceeds of any such sale or sales so made aforesaid, to make as the said Margaretta Schlorp shall or may in writing request and direct as aforesaid. And after the decease of said Margaretta Schlorp, to convey the said pieces or parcels of ground and premises, or such parts or portions thereof or such right or estate therein as shall not have been otherwise previously disposed of, unto such person or persons, in such manner and for such uses and purposes as the said Margaretta Schlorp shall have devised or directed by last will and testament, or other instrument of writing in the nature of a last will and testament, duly witnessed and proven as such, notwithstanding her present or any future coverture. And after the decease of said Margaretta Schlorp, to convey the said pieces or parcels of ground and premises, or such part or portion thereof or such right or estate therein as shall not have been previously disposed of by deed or will or otherwise, in manner as aforesaid, unto the heirs-at-law of said Margaretta Schlorp, in fee-simple.

And the said John B. Kibbey, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to

and with the said John Killian, his heirs and assigns, in the manner following—that is, that he, the said John B. Kibbey, and his heirs, shall and will warrant and forever defend the said pieces or parcels of ground and premises unto the said John Killian, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through the said John B. Kibbey and his heirs, or any of them.

And, further, that he, the said John B. Kiddey, and his heirs, shall and will at any time hereafter, upon the request and at the cost of the said John Killian, as trustee, his heirs and assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of ground and premises unto the said John Killian, as trustee, his heirs and assigns, as the said John Killian, his heirs or assigns, or his or their counsel, learned in the law, shall advise, devise, or require.

In testimony whereof, the said parties of the first and second parts have hereunto set their hands and seals on the day and year first hereinbefore written.

JNO. B. KIBBEY. [SEAL.]
HELEN M. KIBBEY. [SEAL.]
WM. SCHLORP. [SEAL.]
MARGARETTA SCHLORP. [SEAL.]

Signed, sealed, and delivered in the presence of (the interlineation of words "and five hundred and ninety dollars to said Kibbey paid," on the first page hereof, being first made)—

THOMAS C. DONN.
F. J. MURPHY.

DISTRICT OF COLUMBIA, }
County of Washington, } *Set.:*

We, Thomas C. Donn and F. J. Murphy, two justices of the
19 peace in and for the county of Washington aforesaid, in said District, do hereby certify that John B. Kibbey and Helen M., his wife, and William Schlorp and Margaretta, his wife, parties to a certain deed bearing date on the twenty-third day of October, A. D. 1858, and hereunto annexed, personally appeared before us in our said county, the said John B. Kibbey and Helen M. Kibbey, his wife, and William Schlorp and Margaretta Schlorp, his wife, being personally well known to us as the persons who executed the said deed, and the said John B. Kibbey and William Schlorp acknowledged the same to be their act and deed; and the said Helen M. Kibbey and Margaretta Schlorp being by us examined privily and apart from their said husbands, and having the said contents of said deed fully explained to them, they acknowledged the same to be their act and deed, and they declared that they had willingly signed, sealed, and delivered the same, and that they wished not to retract it.

Given under our hands and seals, this twenty-fifth day of October, A. D. 1858.

THOMAS C. DONN, *J. P.* [SEAL.]
F. J. MURPHY, *J. P.* [SEAL.]

"Received 2d November, 1858, to be recorded, and the same day was recorded in Liber J. A. S., No. 159, folio 413, 414, 415, and 416, one of the land records for Washington county, District of Columbia, and examined by Jno. A. Smith, clerk."

EXHIBITS M. & M., No. 3.

This indenture, made this twenty-third day of December, in the year of our Lord one thousand eight hundred and sixty-eight, between William Schlorb, of the first part, John Killian, of the second part, and Margaretta Schlorp, of the third part, all of Washington, District of Columbia, witnesseth:

That for and in consideration of the love and affection the said William Schlorb bears for the said Margaretta Schlorb, his wife, and for and in consideration of the sum of five dollars, current money, to him in hand paid by the said John Killian, at and before the sealing and delivering of these presents, the receipt of which he, the said William Schlorp. doth hereby acknowledge, he the said William Schlorp hath given, granted, bargained, sold, enfeoffed, and confirmed, and by these presents doth give, grant, bargain, sell, enfeoff, and confirm unto the said John Killian, his heirs and assigns, all that piece of ground lying and being in the city of Washington, District of Columbia, and known and described as lot numbered one (1), in square six hundred and fifty-four (654), as the same is laid down upon the plat or ground plan of said city of Washington, together with all and singular, the buildings, improvements, rights, privileges, and appurtenances to the same belonging, and also all the goods and chattels, described below in schedule marked A.

To have and hold the said herein described lot and premises, with the appurtenances to the same belonging, and also the below described goods and chattels, unto the said John Killian, his heirs and assigns, for the uses, purposes, benefit, and behoof of the said Margaretta Schlorb, the wife of the said William Schlorb, her heirs and assigns forever, with full power and authority that the said John Killian, his heirs and assigns, at the request of the said Margaretta Schlorb, her heirs and assigns, shall sell, dispose of, convey, enfeoff, lease, rent, or barter the said premises and goods for the sole use, benefit, and behoof of the said Margaretta Schlorb, her heirs and assigns, without the control of the said William Schlorb, as his heirs, and free from his debts, and from his control and that of any of his creditors, and to and for the only proper use, benefit, and behoof of the said Margaretta Schlorb, her heirs and assigns, forever.

In witness whereof, the said William Schlorb hath hereunto set his hand and seal, the day and year first above given.

WM. SCHLORB. [SEAL.]

Witnessed by—
LOUIS SCHADE.

Schedule A.

1. Butcher stall No. 1 (number one), in the old Center Market.
2. Butcher stall No. 3 (number three), in the Navy Yard Market, both in the city of Washington.
3. Bacon and salt meat, whatever there may be, and also the butcher business, including apparatus, implements and stock, now on the premises, owned by John Killian, in trust for Margaretta Schlorb, and by George Leonhardt Schlorb, comprising several lots in square six hundred and fifty-four (654), in the city of Washington, District of Columbia.

WM. SCHLORB.

Witnessed by—
LOUIS SCHADE.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, Louis Schade, a notary public in and for said county and District, do hereby certify that William Schlorb, party to a certain deed, bearing date the twenty-third day of December, eighteen hundred and sixty-eight, and hereto annexed, personally appeared before me, in my county aforesaid, the said William Schlorb, being personally known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-third day of December, 1868.

LOUIS SCHADE, *Notary Public.*

"Received 24th December, 1868, recorded in Liber D, No. 4, folio 421, of the land records of Washington Co., D. C., examined by F. P. Cuppy, register."

EXHIBITS M. & M., No. 4.

This indenture, made this fifth day of October, in the year of our Lord one thousand eight hundred and sixty-five, between Henry Joseph Baker and his wife, Anne B. Baker, of the District of Columbia, of the one part, and George Leonard Schlorb, of the same place, of the other part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars, current money of the United States, to them in hand paid at or before the sealing and delivery of these presents by the said George L. Schlorb, the receipt of which is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, and sell, enfeoff, convey, release, and confirm unto the said George Leonard Schlorb, his heirs and assigns, forever, all that lot of ground and premises situate and lying in said city of Washington, D. C., and known upon the public plat thereof as and being lot numbered two (2) in square numbered six hundred and fifty-four (654).

21 Together with the buildings, improvements, rights, privileges, appurtenances and hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, and interest and estate of them, the said parties of the first part, in and to the same.

To have and to hold the said piece of ground and premises with the appurtenances unto him, the said George L. Schlorb, his heirs and assigns forever, to — and their sole use and benefit and behoof forever. And the said parties of the first part for themselves, their heirs, executors and administrators, by these presents covenants, promises, and agrees to and with the said George L. Schlorb, his heirs and assigns, in manner following, to wit: That they, the said parties of the first part, and their heirs, shall and will warrant and forever defend *defend* the said piece or parcel of ground and premises with the appurtenances hereby bargained and sold unto him, the said George L. Schlorb, his heirs and assigns, from and against them, the said parties of the first part, their heirs and assigns, and all persons claiming or who may claim by, under, or through them or any of them.

And further that they, the said parties of the first part, and their heirs shall and will at any time and all times hereafter, at the request and cost of the said George L. Schlorb, his heirs and assigns, make and execute any every other deed of assurance in law for the more sure and effectual conveyance of the said piece or parcel of ground and premises with the appurtenances to the said George L. Schlorb, his heirs and assigns, that the said George L. Schlorb, his heirs or assigns, or his or their counsel learned in the law, shall or may devise, advise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and affixed their seals, the day and year first hereinbefore written.

H. J. BAKER. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHAS. L. WALTER.

DISTRICT OF COLUMBIA, }
County of Washington, } *To wit:*

I, Chas. Walter, a notary public, duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Henry Joseph Baker, party to a certain deed bearing date on the fifth day of October, A. D. 1865, and hereunto annexed, personally appeared before me in my county aforesaid, the said Henry Joseph Baker, being personally well known to me as the person who executed the said deed, and Henry J. Baker acknowledged the same to be his act and deed.

Given under my hand and official seal this —— day of October, A. D. 1865.

CHAS. WALTER, *Notary Public.*

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles Walter, a notary public, duly appointed, in and for the county of Washington, in the District of Columbia, do hereby certify that Anne B. Baker, wife of Henry Joseph Baker, a party to a certain deed bearing date on the fifth day of October, A. D. 1865, and hereto annexed, personally appeared before me, in my county aforesaid, the said Anne B. Baker, being personally well known to
22 me as the person who executed the said deed and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Anne B. Baker, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this — day of October, A. D. 1865.

CHAS. WALTER, *Notary Public, D. C.*

"Received for record 27th November, 1865, R. M. Hall, reg., recorded January 13, 1866, in the land records for Washington county, District of Columbia, liber R. M. H., No. 4, folio 236, 237, and 238, and examined by R. M. Hall, reg."

EXHIBITS M. & M., No. 5.

This indenture, made this twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-five, by and between Thomas Brown and his wife, Mary A. Brown, of the city of Washington, in the District of Columbia, of the first part, and John Killian, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of two hundred ninety-seven dollars and fifty-five cents, current money of the United States, to them in hand paid by Margaret Schlorb, wife of William Schlorb, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, sell, enfeoff, convey, release, and confirm unto the said John Killian, his heirs and assigns, forever, the following piece or parcel of ground lying and being in the city of Washington, in the District of Columbia, and known as all of lot numbered three (3) in square numbered six hundred and fifty-four (654), together with all the rights, privileges, appurtenances, and other hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, interest, and estate of the said parties of the first part in and to the same.

To have and to hold the said described ground and premises with the appurtenances unto him, the said John Killian, his heirs and assigns, forever. In trust, nevertheless, for the sole and separate and exclusive use, benefit, and behoof of the hereinbefore-mentioned

Margaret Schlorb, free from the control of the present or any future husband; she may have the power at any time to sell and dispose of said premises in fee simple, or of any lesser estate by deed or will to be executed or acknowledged by her as though she were a *feme sole*, and the said party of the second part and his heirs to convey the same according to direction and appointment in such deed or will, and in default of disposition or appointment on the death of said Margaret Schlorb, the trustee to convey the same to the legal heirs of the said Margaret Schlorb.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year hereinbefore written.

THOMAS B. BROWN. [SEAL.]

her
MARY A. × BROWN. [SEAL.]
mark.

Signed, sealed, and delivered in the presence of—
CHAS. WALTER.

23 DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles Walter, notary public duly appointed in and for the county of Washington, in the District of Columbia, do certify that Thomas B. Brown executed a certain deed, bearing date on the 21st day of December, A. D. 1865, and hereunto annexed, personally appeared before me in my county aforesaid the said Thomas B. Brown, being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and official seal, this 21st day of December, A. D. 1865.

CHARLES WALTER, *Notary Public.*

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles Walter, a notary public duly appointed in and for the county of Washington, in the Dist. of Columbia, do hereby certify that Mary A. Brown, wife of Thomas B. Brown, a party to a certain deed bearing date on the twenty-first day of December, A. D. 1865, and hereto annexed, personally appeared before me in my county aforesaid the said Mary A. Brown, being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Mary A. Brown, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal, this 21st day of December, A. D. 1865.

CHARLES WALTER, *Notary Public.*

" Received for record 27 December, 1865, R. M. Hall, reg., recorded February 27th, 1866, in liber R. M. H., No. 14, folio 62 and 63, one

of the land records for Washington county, D. C., examined by R. M. Hall, reg."

EXHIBITS M. & M., No. 6.

This indenture, made this third day of May, in the year of our Lord one thousand eight hundred and sixty-six, by and between Amos P. Beadle and his wife, Cecilia Beadle, of the city of Washington, in the District of Columbia, of the first part, and John Killian, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one hundred and ninety dollars, current money of the United States, to them in hand paid by Margaret Schlorb, wife of William Schlorb, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents do give, grant, bargain, sell, enfeoff, convey, release, and confirm unto the said John Killian, his heirs and assigns, forever the following piece or parcel of ground situate, lying, and being in the city of Washington, in the District of Columbia, and known and described as the north half of lot numbered seven (7), in square numbered six hundred and fifty-four (654), as will more fully appear by reference to the plat or plan of said square on file in the surveyor's office of the said city of Washington, together with all the rights, privileges, appurtenances,
24 and other hereditaments to the same belonging, or in any manner appertaining, and the remainder, reversions, rents, issues, and profits thereof, and all the right, title, interest, and estate of the said parties of the first part in and to the same.

To have and to hold the said described ground and premises, with the appurtenances unto him, the said John Killian, his heirs and assigns forever. In trust, nevertheless, for the sole and separate and exclusive use, benefit, and behoof of the hereinbefore-mentioned Margaret Schlorb, free from the control of her present or any future husband; she may have the power at any time to sell and dispose of said premises in fee simple, or of any lesser estate by deed or will, to be executed and acknowledged by her as though she were *femme sealc;* and the said party of the second part and his heirs to convey the same according to direction and appointment in such deed or will, and in default of disposition or appointment on the death of said Margaret Schlorb, the trustee to convey the same to the legal heirs of the said Margaret Schlorb.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, the day and year hereinbefore written.

AMOS BEADLE. [SEAL.]
CECILIA M. BEADLE. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHARLES WALTER.

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles Walter, a notary public duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Amos P. Beadle ———, party to a certain deed bearing date on the third day of May, A. D. 1866, and hereunto annexed, personally appeared before me, in my county aforesaid, the said Amos P. Beadle, being personally well known to me as the person who executed the said deed, and Amos P. Beadle acknowledged the same to be his act and deed.

Given under my hand and official seal, this third day of May, A. D. 1866.

CHARLES WALTER, *Notary Public.*

DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Charles Walter, a notary public duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Cecilia Beadle, wife of Amos P. Beadle, a party to a certain deed, bearing date on the third day of May, A. D. 1866, and hereto annexed, personally appeared before me in my county aforesaid, the said Cecilia Beadle, being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Cecilia Beadle, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal, the third day of May, A. D. 1866.

CHAS. WALTER, *Notary Public.*

"Received for record May 3, 1866, and recorded in liber R. M. H., No. 15, folio 347, &c., one of the land records for Washington county, D. C., and examined by R. M. Hall, register."

25 *Decree in Gen. Term. Filed May 20, 1878.*

In the Supreme Court of the District of Columbia, in General Term, A. D. 1878.

MARGARET SCHLORB *et al.* }
vs. } In Equity. No. 5322.
WILLIAM E. CLARK. }

This cause came on to be heard on the appeal from the special term of this court, holding an equity court, and the same having been argued by counsel, and duly submitted, to and conceded by, the court, it is, this 20th day of May, A. D. 1878, by the court, ordered and adjudged and decreed that the decree of the said equity court dismissing the said bill of complaint in this cause be, and the same is hereby, reversed; and further, it is ordered, adjudged, and

decreed that the demurrer of said defendant be, and the same is hereby, overruled; and the said cause having been also submitted on the bill of complaint, it is further ordered, adjudged, and decreed that the decree in said equity cause No. 3877, wherein said William E. Clark is complainant and said Mary Margaret Schlorb, John G. Killian, and others, are defendants, passed on the 17th of February, A. D. 1875, declaring certain conveyances of lots (1) and three (3) and the north half ($\frac{1}{2}$) of lot seven (7) to John Killian, in trust for said Mary Margaret Schlorb, mentioned in said bill of complaint, in said equity cause No. 3877, null and void, be, and the same is hereby, affirmed; and further, it is ordered, adjudged, and decreed that the decree passed in said equity cause, No. 3877, on the 18th day of June, A. D. 1875, declaring certain deeds of conveyances of lots five (5), six (6), eight (8), and nine (9), in square No. 654, to John Killain, in trust for the use of said Mary Margaret Schlorb, wife of William Schlorb, and the conveyance of lot two (2) in said square No. 654, to George L. Schlorb, to be null and void, be, and the same is hereby, reversed and set aside; and further, it is ordered, adjudged, and decreed *and decreed* that the sales made by virtue of the said decree as to said lots two, five, six, eight, and nine be, and the same are hereby, declared null and void, and the same are hereby set aside; and further, that all deeds of conveyances made by virtue of any decree in said equity cause No. 3877 of said lots two, five, six, eight, and nine be, and the same are hereby, canceled and declared null and void; and further, that said Francis Miller, trustee under the said decree of the 18th day of June, A. D. 1875, be, and he is hereby, restrained and prohibited from executing and delivering any deed or deeds of said lots two, five, six, eight, and nine to the purchaser or purchasers thereof; and further, that all decrees ratifying said sale or sales of said lots two, five, six, eight, and nine be, and the same are hereby, reversed and set aside; and it appearing to the satisfaction of the court that out of the proceeds of the sale of said lots two, five, six, eight, and nine, the sum of one hundred and fifty-six $\frac{57}{100}$ dollars was paid as taxes on said lots, and the further sum of two hundred and thirteen $\frac{85}{100}$ dollars was allowed and paid as widow's dower to said Mary Margaret Schlorb, judgment creditors. It is therefore further ordered, adjudged, and decreed that said complainants pay or cause to be paid to said Francis Miller, trustee in said equity cause No. 3877, within five months, the said taxes and dower, amounting to the sum of three hundred and seventy $\frac{42}{100}$ dollars, with interest from
26 the date of this decree, who is hereby ordered and directed to distribute and pay the same to the parties entitled thereto; and further, that said sum of three hundred and seventy $\frac{42}{100}$ dollars be, and the same is hereby, declared a lien on said real estate, and said defendant to pay costs of this cause.

D. K. CARTTER, *Ch'f Justice.*

Defendants' Appeal to Sup. Court U. S. Filed May 20, 1878.

In the Supreme Court of the District of Columbia.

KILLIAN *et al.*
vs.
CLARK *et al.* } Equity. No. 5322.

The defendants, in open court, pray an appeal to the Supreme Court of the United States from so much of the decree this day passed herein as reverses and sets aside the decree passed in said equity cause No. 3877, on the 18th day of June, 1875, and declares the sales made under said last-mentioned decree, and the conveyances thereunder, null and void.

FRANCIS MILLER,
Sol'r for Defendants.

And the said appeal is here now by the court allowed. (3 Min., p. 187.)

Complainants' Appeal to Sup. Court U. S. Filed May 22, 1878.

In the Supreme Court of the District of Columbia, in General Term, A. D. 1878.

MARY MARGARET SCHLORB *et al.*, Complainants,
vs.
WILLIAM E. CLARK, Defendant. } In Equity. No. 5322.

Now comes the complainants, in open court, and pray an appeal to the Supreme Court of the United States from so much of the decree passed in this cause on the 20th day of May, A. D. 1878, as affirms the decree passed in equity cause 3877, on the 17th day of February, A. D. 1875, as to said lots one, three, and the half of lot seven, in this cause described. And also prays an appeal to said Supreme Court of the United States from so much of said decree of said 20th day of May, A. D. 1878, as orders said complainant to pay to said Francis Miller, trustee, $374\frac{6}{100}$, and makes said sum a lien on said real estate.

W. J. MILLER,
Sol'r for Comp'ts.

Appeal allowed.

Penalty of appeal bond to be $1,000. (3 Min., p. 188.)

1881, October 7th. Appeal bond approved and filed. Authentication of record.

Clerk's Certificate.

Clerk's Office, Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause—

Witness my hand and the seal of said court, this 7th day of October, A. D. 1881.

[SEAL.] R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR.,
Ass't Clk.

Justice's Certificate.

I, David K. Cartter, chief justice of the said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal, the 7th day of October, A. D. 1881.

D. K. CARTTER, [SEAL.]
Chief Justice Supreme Court D. C.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

28 Witness my hand and the seal of the said court, this 7th day of October, A. D. 1881.

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR.,
Ass't Clk.

Endorsed on cover: Dist. of Columbia Sup. Court. No. 337. John George Killian, administrator *de bonis non* of Wm. Schlorb, deceased, Mary Margaret Schlorb, Emma Schlorb, Whelimina Schlorb, Kate Schlorb, George L. Schlorb, and John Schlorb, appellants, *vs.* William E. Clark. Filed October 7, 1881.

111-784

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 337.

CROSS APPEAL

OF

JOHN GEORGE KILLIAN, ADMINISTRATOR, &c., OF WILLIAM SCHLORB, DECEASED, MARY M. SCHLORB, *et al.*, APPELLANTS,

vs.

WILLIAM E. CLARK, APPELLEE.

WILLIAM J. MILLER,
Counsel for Appellants, Cross-Appeal.

JUDD & DETWEILER, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 337.

CROSS APPEAL

OF

JOHN GEORGE KILLIAN, ADMINISTRATOR, &C., OF WILLIAM SCHLORB, DECEASED, MARY M. SCHLORB, *et al.*, APPELLANTS,

vs.

WILLIAM E. CLARK, APPELLEE.

Before entering on a brief statement of this cross appeal, we desire to say that before the hearing on Clark's appeal we were unable to procure sureties on cross-appeal bond and give security for costs to the clerk of this Court.

See affidavits filed in Clark's appeal, No. 264, October, Term, 1880.

The case was heard on Clark's appeal and decided, without prejudice to any right which appellees (in cross-appeal) may have to an appeal.

Clark *vs.* Killian *et al.*, 103 U. S. S. C. R., 769.

Brief of Case.

This suit was brought by the appellants by a bill of review in the court below to have *two* decrees, which were

signed and enrolled in equity cause No. 3877 in the supreme court of the District of Columbia, wherein the said William Clark is complainant, and these appellants, John G. Killian, administrator *de bonis non* of William Schlorb, deceased, Mary Schlorb, his widow, and also his children are defendants. Reviewed and reversed on the grounds of manifest errors in the two decrees.

It appears that William Schlorb was a man doing a large business a short time prior to his death, and was a man of considerable means at one time.

It appears from Clark's statement that on or about the 22d November, 1865, Schlorb commenced to deal with Clark, and that his daily transactions with Clark alone were from $275 to $1,600 a day, for a period of two years and eleven months, amounting to $99,502.83, and during the same period of time Schlorb paid to Clarke $95,683.58.

Record, page 3, Sec. 9.

That a controversy arose between Clark and Schlorb as to their transactions, and Clark, on the 12th May, 1869, instituted his action against Schlorb. That on the 13th December, 1871, Schlorb died, and John Killian was appointed administrator, and was then made a party to said action, and on the 26th June, 1873, Clark recovered judgment against the administrator for $3,819.75. That afterwards John Killian died, and J. George Killian was appointed administrator *de bonis non*.

Record, p. 1, Sec. 1; p. 3, Sec. 9.

Clark filed his judgment creditors bill in equity against John George Killian, administrator *de bonis non*, Mary Schlorb, as the widow, and against the children of William Schlorb, charging that he recovered the said judgment, and that Schlorb had conveyed and caused to be conveyed in the year 1858 lots 5, 6, 8, and 9, in square 654, to John Killian, in trust for his wife, said Mary M. Schlorb, and

also avered that Schlorb, on the 21st December, 1865, purchased lot No. 3 in said square 654 from one Thomas B. Brown, and had the same conveyed to said John Killian, in trust for said Mary M. Schlorb, and that he also, on 3d May, 1866, purchased from Amos P. Beadle the north half of lot No. 7, in square 654, and had the same conveyed to said John Killian, in trust for said Mary M. Schlorb, and that said Schlorb, on the 23d day of December, 1868, conveyed lot No. 1, in said square 654, to said John Killian, in trust for said Mary M. Schlorb. That he (Clark) is advised that the aforesaid deeds of conveyances were made and caused to be made to hinder, delay, and defraud him, said Clark, and other creditors of him, said Schlorb.

Record, p. 2, Secs. 2, 3, 4; p. , Sec. 6 and 7.
Record, p. 4, Sec. 11.

Clark prayed by his said bill the said several deeds of conveyance to said Killian, trustee, be declared null and void as to him and other creditors, and that a trustee be appointed by the court to make sale of the property.

Record, p. 4, Secs. 2 and 3.

Mrs. Schlorb, (in brief,) by her answer, *under oath*, denies each and every allegation charging fraud upon herself and her deceased husband, in reference to the property, and stated the greater portion of the property was conveyed before any dealings took place between her deceased husband and Clark, and when her husband was free from debt and in comfortable circumstances and *engaged in prosperous business;* that the only piece of property conveyed in trust for her by her husband was one lot, (*i. e.* lot 1,) in 1868, after the dealings between her husband and Clark commenced; and that at the time of conveyance of the last-mentioned piece of property, upon a settlement of accounts between her husband and Clark no balance would have been found due Clark; that said indebtedness between her husband and

Clark arose some time subsequent to said last transfer and shortly before the death of her husband.

Record, p. 5, Sec. 2.

Again, in relation to the allegations of Clark that said conveyances were a fraud upon other creditors of her husband, she says the *same are not true*, inasmuch as her husband was at that time free from debts and conducting a prosperous business.

Record, p. 5, Sec. 4.

Again, she says that the transfer of the property was *made in good faith, and with no intention or disposition to defraud creditors*, and that Clark is the only person who claims a debt to be due from her husband.

Record, p. 6, Sec. 8.

Again, she says that a large portion of the purchase money of the property was paid by her, being the result of her own labor and exertions and apart from anything received from her husband.

Record, p. 6, Secs. 5 and 6.

John G. Killian, administrator *de bonis non*, in his answer, says he knows nothing in relation to the property conveyed to John Killian, trustee, for the benefit of Mrs. Schlorb, except the fact of the deeds conveying the property being of record among the land records of the District of Columbia, and that at the time of such transfers of said real estate *he knows, of his own* knowledge, William Schlorb was engaged in a prosperous business; was entirely responsible; and that *said deeds were not made with any intent or design to defraud any of his creditors*, much less Clark, with whom, at that time, Mr. Schlorb had not commenced to deal, and he is satisfied that a large portion of the purchase money for said property was contributed by Mrs. Schlorb.

Record, p. 7, Sec. 8.

The guardian *ad litem* for the infant defendants merely filed the usual answer, submitting their rights to the protection of the court.

The heirs of John Killian, trustee, were not made parties to Clark's bill.

Clark then joined issue upon the answers, and set cause for hearing on bill and answers.

On the 17th day of February, 1875, the chancellor decreed the conveyances of lots 1, 3, and north half of lot 7 to said John Killian, in trust for Mrs. Schlorb, null and void, and decreed a sale of the same to pay Clark's judgment.

On the 18th June, 1875, the chancellor, on further hearing of the cause, passed a second decree, decreeing the conveyance of said lots 5, 6, 8, and 9 to John Killian, in trust for Mrs. Schlorb, also null and void, and decreed a sale of the same to satisfy Clark's judgment.

Record, p. 7, Sec. 10, and p. 8, Sec. 12.

On the 4th January, 1877, Mrs. Schlorb and the other defendants in Clark's bill filed their bill of review in the supreme court of the District of Columbia, setting forth Clark's bill and the answers, and claiming that there were errors in the several decrees which declared the several conveyances null and void, and decreeing a sale of the several lots.

To the bill of review Clark demurred, and, on hearing of the demurrer, the chancellor sustained the demurrer and dismissed the bill of review; and from that decree, sustaining the demurrer and dismissing the bill of review, Mrs. Schlorb and the other complainants in the bill of review appealed to the court in general term of the supreme court of the District of Columbia, which reversed the decree sustaining the demurrer and dismissing the bill, and made the decree confirming the decree of the 17th February, 1875, declaring the conveyances of lots 1, 3, and north half of 7 null and void, and *reversed* the decree of the 18th June, 1875, *declaring* the conveyances of lots 5, 6, 8, and 9 null and void.

See decree, Record, p. 28.

From this decree, both Clark and the Schlorbs and Killian appealed to this Court.

Record, p. 30.

Before entering upon the argument of the case we desire to say—

1st. We have been particular to make the above brief statement of the case over again, because there have been changes made in the Court by the *appointment* of *new justices* of this Court.

2d. That as to said lots 5, 6, 8, and 9, this Court has already decided in favor of the appellants in this cross-appeal.

Clark *vs.* Killian, Schlorb, *et al.*, 103 U. S. S. C. R., 769.

3d. That the amount allowed Snyder, as judgment creditor of Mrs. Schlorb, has been (with taxes) refunded to Mr. Francis Miller's (trustee) assignee, as hereinafter stated.

The greater part of amount to be paid Francis Miller's (trustee) assignee under said decree have been paid by a sale of a part of the lots by the Schlorbs, and the balance must be paid, as the deferred notes or payments on the sales fall due, as the same is a lien upon the property by the decree.

4th. That complainants Schlorb and Killian are not by decree of court required to pay any money or deliver possession of land to Clark. The money is made a lien upon the property by the decree.

See decree, pp. 28 and 29.

It will, no doubt, be claimed by Clark that this court has not jurisdiction of this cross-appeal, and the cross-appeal must be dismissed for want of jurisdiction. It will seem, however, that Clark's appeal brought the case here, and his appeal was clearly within the jurisdiction of the Court; hence it is manifest that any error shown to exist in the decrees below, regularly appealed from by either party, is

fairly and properly before this court for consideration and decision, because the bill of review attacks both decrees passed in one cause, and forms one decree from which both appeals have been taken.

II.

Again, it was claimed by Clark that the bill of review as to the decree of 17th February, 1875, was not filed in time.

The appellants in cross-appeal, Schlorbs and Killian, continued—

1st. The bill of review was filed in time. The decree was signed and enrolled on 17th February, 1875. The bill of review was filed 4th January, 1877; hence was filed within two years, and is therefore within time.

Clark *vs.* Killian, 103 U. S., (13 Otto,) 766.
Thomas *vs.* Harris' Heirs, 10 Wheat., 147.

2d. A bill of review is the proper remedy after a decree has been signed and enrolled.

Whitney *vs.* Bank U. S., 13 Peters, 613.
Clark *vs.* Killian, 103 U. S. R., 766.

3d. The bill of review sets forth all that is alleged in the bill and answers. It sets forth the decrees and errors relied on. This is sufficient, and to see if there be errors the court will look into the bill, answers, and other proceedings.

Whitney *vs.* Bank U. S., 13 Peters, 6, 13, 14.
Clark *vs.* Killian, 103 U. S., (13 Otto,) 766.

4th. When a bill of review has been demurred to, the facts, including recitals in the bill, are admitted to be true.

Coteral *vs.* Purchase, 1 Atk., 290.

It clearly appearing that the bill of review is the proper remedy, and this court has jurisdiction, the appellants, Schlorbs and Killian, in this cross-appeal assign as errors in the decrees of 17th February, 1875, as follows:

Assignment of Errors on Behalf of Appellants in Cross-appeal.

1st. That so much of said decree of the 17th February, 1875, as declared the deeds of conveyances of lots 1 and north half of 7, in square 654, to said John Killian, trustee, null and void as to creditors, is erroneous, because the same was not justified by the facts alleged in Clark's bill and the answers thereto.

2d. That so much of said decree of the 17th February, 1875, as declared the deed of conveyance of lot one, in square 654, to said John Killian, trustee, null and void as to creditors, is erroneous, because the same was not justified by the facts alleged in Clark's bill and the answers thereto.

3d. That so much of the decree of the general term of the supreme court of the District of Columbia as affirmed said decree of 17th February, 1875, is erroneous, for the reasons set forth in 1st and 2d assignment of errors.

4th. That said John Killian's heirs should have been made party defendants to said Clark's bill, because it appears by said bill that the legal title of the said estate was in John Killian and his heirs, and that at the time Clark filed his bill John Killian was dead.

5th. Clark does not show by his bill that said William Schlorb *did not leave sufficient personal assets to pay debts against his estate.*

6th. That the infant children of said William Schlorb should have been produced in court to have a guardian appointed for them.

Argument on the Assignment of Errors and upon the Merits.

FIRST.

The appellants, Schlorb and Killian, contend on 1st, 2d,

and 3d assignment of errors, declaring the deeds of conveyances of lots 1, 3, and north half of 7 null and void as to creditors, was not warranted by the allegations of Clark's bill and the answers thereto, because it is alleged by Clark that he commenced to have business transactions with William Schlorb about 22d November, 1865, (and not 22d October, as claimed by Clark's solicitor in his brief,) and that a controversy arose between him and Schlorb as to those transactions, and he instituted his action against Schlorb at law, and on 12th May, 1869, after the death of Schlorb, he recovered judgment, on 26th June, 1873, against Schlorb's administrator.

Record, p. 3, Sec. 9; p. 10, Secs. 4 and 5.

Clark, in section 9 of his bill, refers to and makes part of his bill the proceedings in that action, and from those proceedings, as alleged in bill of review, (Record, p. 10, Secs. 4 and 5,) it appears the *daily* transactions *alone* between Clark and Schlorb was $275 to $1,600; and that from 22d November, (*not 22d October*,) 1865, to 22d October, 1868, to wit, two years and eleven months, the business transactions *alone* between Clark and Schlorb was $99,502.83, and Schlorb paid Clark during the same period of time $95,683.58, and this is shown by Clark against the administrator. Schlorb being dead, his administrator certainly could not show what amount was or was not due to Clark.

SECOND.

As to conveyances of lot 3, made 23d December, 1865, north half of lot 7, made 3d May, 1866, and of lot 1, made 23d December, 1868, see Exhibits M and M 5, p. 25; M and M 6, p. 27, and M and M 3, pp. 22, 23. Schlorb was doing a prosperous busines, and that from that period of time he did business with Clark *alone* of $99,502, and he paid Clark nearly $96,000.

Again, it does not appear in Clark's bill that Clark, or any

other person, was a creditor of Schlorb in the years 1865, 1867, 1868, nor is it alleged in Clark's bill that Schlorb was indebted to him or any one else at the date of the execution or recording of the said deeds of conveyances to Killian, in trust, for Mrs. Schlorb. Clark does not attempt to prove that Schlorb was indebted to him or any one else at the date of the conveyances or the recording thereof. True, Clark says in his bill he is advised that said several transfers of the property were fraudulent and void as to him and other creditors; yet he does not show how such transfers are fraudulent and void. He does not even attempt to prove any fraudulent transfer, nor does he charge that at the time of filing his bill Schlorb was indebted to any person except himself.

Mrs. Schlorb, in her answer, (Record, p. 5, Sec. 2,) denies the charge of fraud, and she states the fact to be that the transfer of the greater portion of the property was made and completed about eight years before any dealings took place between her husband and Clark, and at a time when her husband was free from debt, in comfortable circumstances, and engaged in a prosperous business; and that the only piece of property transferred in trust for her by her husband was one lot, (*i. e.* lot 1,) in the year 1868, after the dealings between Schlorb and Clark had commenced and were in progress, and she avers the fact to be that at the time of the transfer of the last-mentioned piece of property, (*i. e.* lot 1,) upon a settlement of accounts between her husband and Clark, *no balance would have been found against her husband, the indebtedness forming the basis of said bill having arisen some time subsequent to said transfer and very shortly before the death of her husband.*

Again, she says (Record, p. 5, Sec. 4,) that the property, with the single exception of one lot, having been transferred for her benefit before the transactions between Clark and her husband commenced, no credit could have been given her husband on that account, and said transactions could,

in no way, have contributed to the creation of the indebtedness. And in relation to the allegation of fraud in said bill of Clark's that said transactions were a fraud upon other creditors of Schlorb, she says the same is not true, inasmuch as Schlorb was, at the time, free from debt and conducting a prosperous business.

Again, she says, (Record, p. 6, Sec. 8,) to show that the transfers of the property were made in good faith, and with no intention or disposition to defraud creditors, she states that Clark is the only person who claims a debt to be due from Schlorb.

John George Killian, administrator *de bonis non* of William Schlorb, says, (Record, p. 7, Sec. 8,) "that at the time of transfers of said real estate that he, of *his* own personal knowledge knows that said William Schlorb, deceased, was engaged in a prosperous business—was enteirely responsible—and that said deeds were not made with intent or design to defraud any of his (Schlorb's) creditors.

Hence, it has been shown that the conveyances of lots 1, 3, and north half of 7, were not conveyed with intent to delay, hinder, or defraud creditors.

THIRD.

Clark having set the cause for hearing on his bill and answers, and the answers being responsive to Clark's bill, and no evidence having been offered to contradict the answers, the chancellor should have dismissed Clark's bill, equity cause 3877.

Because—

1st. It is a well-settled rule that when the answer is responsive to the bill denying the allegations of fraudulent motives and intentions in executing a deed, it is conclusive upon that question, unless overcome by testimony of two witnessess or of one with corroborating circumstances.

Freyley *vs.* Freyley, 7 Md., 538.

2d. The demurrer to the bill of review admits all the facts, including the recitals in the bill of review.

3d. To render a deed fraudulent and void as to creditors, there must be fraud in the grantee as well as in the grantor. There is no proof of fraud or even an attempt to prove fraud.

Frakes *vs.* Brown, 2 Blackford, 295.

4th. When a subsequent creditor depends upon the existence of prior debts to vacate deeds on the ground of fraud, he must allege and prove debts.

Lust *vs.* Wilkinson, 5 Vesy, 387.
Holloway *vs.* Millard, 4 Madd., 229.

5th. Subsequent creditors cannot question even a voluntary *fraudulent* conveyance of property which was not intended as a fraud against them.

Graham *vs.* La Cross, &c., R. R. Co., 102 U. S. S. C. R., 148.

6th. There must be at the time of such conveyance a fraudulent intent. This must be clearly shown, or that an indebtedness existed at the time. The fact of an indebtedness, however—the grantor being in prosperous circumstances, and the gift a reasonable provision for the wife or child—will not render the deed fraudulent.

Hines' Lessees *vs.* Longworth, 11 Wheaton, 199.
Seaton *vs.* Wheaton, 8 Wheaton.
Frakes *vs.* Brown, 2 Blackford, 295.
Hamilton *vs.* Greenwood, 1 Bay., 173.

When we take into consideration the amount of business done by Schlorb—*which with Clark alone was over* $99,000, in two years and eleven months—certainly the conveyance of the property to Killian of the value shown by Clark, to

wit: about $4,900, is not an unreasonable provision for Schlorb's wife and his five small children.

We therefore claim that the decree of 17th February, 1875, and the affirmance thereof by the court in general term, was erroneous, and should be vacated, reversed, and set aside.

FOURTH.

As to the fourth assignment of error of appellants in cross-appeal.

We claim the legal title in and to said lots 1, 3, and north half of 7, was in John Killian, his heirs and assigns, in and upon certain trusts, as shown in Clark's bill and Exhibits M. and M., 5 and 6 (Record, pp. 22, 25, and 27). He, Clark, shows that at the time he filed his bill John Killian was dead (Record, p. 1, Sec. 1). Yet Clark failed to make the Killian children or his heirs party defendants in his bill. He should have done so. Not having done so, the decree of 17th February, 1875, and the decree of general term affirming that decree, is erroneous, so far as the same declares the deeds of lots 1, 3, and part of 7, fraudulent and void, were and are erroneous.

O'Hare *vs.* McConnell, 93 U. S. S. C. R., 150.

FIFTH.

As to the fifth assignment of error of appellants in cross-appeal.

Clark does not show or prove insufficiency of personal assets.

SIXTH.

As to sixth assignment of error.

The record in cause of Clark against Schlorb, Equity, No. 3877, does not show that the infant children were in court when guardian was appointed, although it appears (Record,

p. 7, Sec. 6½) three of the children were over the age of fourteen years.

Bank of U. S. *vs.* Ritchie, 8 Peters, 128.

The appellants in cross-appeal submit:

1st. That the decree of the chancellor of the 17th February, 1875, declaring the deeds of conveyance of lots 1, 3, and north half of 7, as fraudulent and void; and—

2d. That so much of the decree of the court in general term as affirms that decree ought to be reversed.

3d. It is shown by the bill of review that said lots have been sold to said Clark under said decree.

Record, p. 12, sec. 20.

Respectfully submitted,

WILLIAM J. MILLER,
Counsel for Appellants, Cross-Appeal.

111-784

IN THE

Supreme Court, United States.

OCTOBER TERM, 1883.

No. 337.

JOHN GEORGE KILLIAN, Administrator, &c., of WILLIAM SCHLORB, deceased, MARY MARGARET SCHLORB, *et al.*, *Appellants.*

vs.

WILLIAM E. CLARK.

This is an appeal from the Supreme Court of the District of Columbia. It cannot be maintained for two reasons:

1. The appeal was prayed May 22d, 1878, (R., p. 30,) and the bond was not approved and filed until Oct. 7th, 1881 (p. 30), and the transcript of the record was not filed in this court until Oct. 7, 1881, (p. 31.)

Under the rules the transcript should have been filed before the close of the October term, 1878, and no new appeal having been prayed, it could not have been properly filed after that time.

U. S. *vs.* Guney, 1 Wall., 690.
Massina *vs.* Cavazos, 6 Wall., 355
Phillip's Practice, (Ed 1872,) 134.

2. The amount in controversy in the appeal is not sufficient to give this court jurisdiction. The decree appealed from ordered the sale of three lots, and there having been no appeal taken from the decree of the special term, they were sold by the trustee appointed for that purpose more than eighteen months before the bill of review was filed. The total amount of the sale was $1,407.34, (R., p. 8, paragraph 11.) There is no allegation that the sale was not a perfectly fair one, nor is there any allegation in the record, much less any proof, that the lots were worth any more than they were sold for. The price obtained is therefore the value of the property in controversy, and this court has no jurisdiction to hear the appeal.

The decree ordering the sale of these three lots was a separate, independent decree, having no relation to any of the other property in controversy; it was specifically affirmed by the General Term; (R., p. 29,) and it was from the action of the General Term, affirming this decree, that appeal was taken; and it is the only point at issue here.

For these reasons it is obvious that the appeal must be dismissed, but it may be worth while to state why the General Term affirmed the one decree and reversed the other.

The three lots sold under the first were purchased by Schlorb after his indebtedness to Clark began. This indebtedness had its inception November 22, 1865, and from that time till his death Schlorb was always in debt to Clark. The three lots sold were purchased by Schlorb Dec. 22, 1868, and were immediately conveyed to his wife, (Exs. M and M, Nos. 3, 5, and 6, pp. 22, 24, and 25,) *as had been all of his personal and real estate from 1858 down to the day of his death.*

The justice who decided the case in the special term held that this continuous transfer of his property, as fast as he acquired it, without consideration, to his wife, was of necessity a fraud upon his creditors, as it threw all the risks of his business upon them, and kept all the profits thereof for his own use in the name of his wife.

The General Term did not concur in this view so far as the property acquired prior to the indebtedness was concerned, and it was sustained by this court; but it did not hold that the property acquired after the indebtedness was contracted was to be held subject to its payment, and this holding is entirely in accord with all the rules of equity jurisprudence.

FRANCIS MILLER,
Solicitor for Appellee.